

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

MATTHEW RIDGE,

Defendant.

Case No. 2:09-cr-00455-LDG

ORDER

The defendant moves (#58) pursuant to 28 U.S.C. §2255 to have the Court vacate and re-enter the judgment, arguing that he instructed his counsel to file an appeal, but that his counsel did not do so. The government does not oppose the motion (#63).¹ As the government has filed a non-opposition to the defendant's allegation, the Court need not hold an evidentiary hearing on the defendant's allegation, but assumes for purposes of the motion that the allegation is true. The failure of counsel to file an appeal as instructed by the defendant is ineffective assistance of counsel, as it denies the defendant an opportunity to file a timely appeal. The appropriate remedy in this circumstance is to

¹ In filing its non-opposition, the Government has indicated that it is reserving all rights obtained by the signing of the plea agreement, in which the defendant waived his right to appeal.

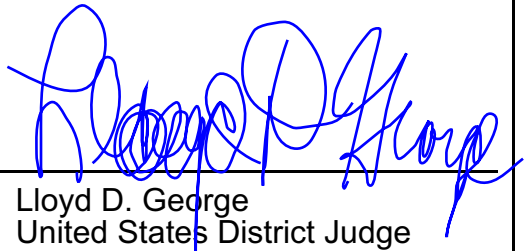
1 vacate and re-enter the judgment, as this provides the defendant an opportunity to file a
2 timely appeal. Accordingly,

3 THE COURT **ORDERS** that the Defendant's Motion Pursuant to 28 U.S.C. §2255 is
4 GRANTED.

5 THE COURT FURTHER **ORDERS** that the Clerk of the Court shall prepare an
6 Amended Judgment in a Criminal Case imposing the same sentence and all other terms
7 and conditions as originally imposed.

8 THE COURT FURTHER **ORDERS** that, effective upon the entry of the Amended
9 Judgment, the Judgment is VACATED.

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11 DATED this 4 day of January, 2012.

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14 Lloyd D. George
15 United States District Judge
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